

**STATEMENT OF
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BEFORE THE
TRANSPORTATION AND INFRASTRUCTURE RAIL SUBCOMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES**

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Chairman Quinn, Congresswoman Brown, Members of the Subcommittee, I appreciate this opportunity to represent Secretary of Transportation Norman Mineta and appear before you today to discuss issues facing the Surface Transportation Board (Board). It is my pleasure to testify along side my long-time colleague Board Chairman Roger Nober.

Today, I am here to provide information on two issues regarding the Board. The first is the current working relationship between the Department of Transportation (DOT), specifically the Office of the Secretary (OST), and the Board. The second topic I would like to discuss deals with the budgetary resources requested for FY 2004 and personnel issues that confront not only the Board but the entire Department.

DEPARTMENT/BOARD RELATIONSHIP

The organizational and working relationship between the Department and the Board began more than seven years ago on January 1, 1996, when the Interstate Commerce Commission (ICC) was terminated. The ICC Termination Act of 1995 (ICCTA) eliminated various functions previously performed by the ICC; transferred licensing and certain non-licensing motor carrier functions to the Federal Highway Administration and now the Federal Motor Carrier Safety Administration, within the Department; and transferred the remaining rail and non-rail functions to the newly created Surface Transportation Board.

The ICCTA established the Board as a decisionally independent, bipartisan, adjudicatory body within the Department of Transportation. We at the Department are fully cognizant and supportive of Congress' intent that the Board retain its decisional independence. In addition, the Department and the Board share common interests in transportation issues. The Department, through its General Counsel, provides comments and opinions in Board rulemakings and in major cases such as mergers. Additionally, the Federal Railroad Administration (FRA) has a close working relationship with the Board on research and data issues. FRA provides half the funding for the Board's annual Carload Waybill Sample, a critical database for rail analyses and regulatory proceedings. On administrative issues, the Department assists the Board with certain day-to-day administrative activities, such as accounts payable and financial reporting, centralized budget administration, the cost-per-copy program, equipment inventory and accountability, and procurement operations. If the Board were required to contract out or provide independently for these activities, it would require additional staff and funding than are currently provided.

With regard to such things as processing personnel actions and payroll, the Board is cross-serviced by the Environmental Protection Agency (EPA). Previously EPA had provided these services to the ICC and given the short period of time from the termination of the ICC to the establishment of the Board, it was determined that continuing this practice would result in the least disruption. Since all of the Board employees were ex-ICC employees and as EPA was handling all of the severance payments for those individuals not transferred from the ICC to the Board, it was reasonable for the Board to continue to use EPA services to ensure a smooth transition.

Regarding the Board's budget, appropriated funds made available to the Board have increased each year since the Board's establishment. The table below (Table 1) indicates the appropriated funding levels from FY 1996 through FY 2003 for the Board, net of reductions/rescissions. It is important to note that a portion of the appropriated funding levels includes reimbursements from the offsetting collection of user fees. The offsetting collection of user fees is based on the costs incurred by the Board for fee-related activities and is commensurate with the costs of processing parties' submissions. In past fiscal years, the Board received both an appropriation and authorization for offsetting collections to fund the Board's expenses. For FY 2003, offsetting collections are estimated to total \$1 million.

Table 1

STB APPROPRIATIONS	
1996.....	\$8,421,000
1997.....	12,244,000
1998.....	13,850,000
1999.....	15,959,000
2000.....	16,930,000
2001.....	17,916,481
2002.....	18,435,000
2003.....	19,320,075

Table 2 below illustrates the Board's average full-time fiscal year employment since its creation. You will note from the table that employment has increased over time, including an increase in FY 2003 from FY 2002.

Table 2

STB FULL-TIME EMPLOYMENT		
1996		106
1997		131
1998		129
1999		131
2000		133
2001		135
2002		135
2003		145

The Board reports that its appropriated resources have enabled it to keep up with its steady workload with new cases being filed as pending cases are resolved. In particular, the Board states that it seeks to resolve matters brought before it fairly and expeditiously. Through the use of its regulatory exemption authority, streamlining of its decisional process and consistent application of legal and equitable principles, the Board facilitates commerce by providing an effective forum for dispute resolution.

FY 2004 BUDGET REQUEST

As a decisionally independent agency within the Department, the Board's preparation and submission of its budget requests varies dramatically from that of other operating administrations in the Department. The ICCTA provided the Board with the authority to submit its budget request directly to the Congress without prior Administration approval, as is typically required of other agencies. Thus, at the same time that the Board submits its initial request for the following fiscal year to the Office of the Secretary, the Board also submits that request to the Congress. For FY 2004, this submission took place on July 8, 2002, long before the Administration developed its FY 2004 budget request for the Department. The Board did participate in discussions with the Department and the Office of Management and Budget regarding the level and use of resources that would be included in the President's Budget for FY 2004. On the day the President submitted his budget request to Congress for FY 2004, the Board officially transmitted its own request for FY 2004 funding directly to Congress.

For FY 2004, the President requested an appropriation of \$19,521,000 while the Board requests an appropriation of \$20,516,000. Both the President's request and the Board's request for FY 2004 include the provision that \$1,050,000 from fees, established by Board, shall be credited to the appropriation as offsetting collections. The Board's FY 2004 request is adjusted from FY 2003 for inflation and pay raises, and adds three full time equivalents over the FY 2003 level of 145. The three additional FTEs would provide the resources the Board estimates it needs to adjudicate ten coal rate complaint cases currently before the Board. In addition, the Board states that the authorization for 148 FTEs would enable the Board to hire replacement staff prior to anticipated retirements. The Board states that this requested increase in personnel would ensure a smooth transition from current staff, who are eligible to retire, to new staff, who would gain the working knowledge and the analytical and legal expertise necessary to process the Board's workload efficiently.

The Board estimates that between now and the end of the current fiscal year, September 30, 2003, nearly 30 percent of its employees will become eligible for retirement. The growing number of Federal employees who are eligible for retirement is not unique to the Board. Because the Board is relatively small, the impact of these potential retirements likely would have a greater impact on the Board than on larger agencies. To add to the complexity of the situation, qualified replacements for experienced Board staff who handle rail cases are difficult to find.

On the other hand, accurately predicting the number of Federal retirements is difficult and the Board might not have as many retirements as it expects. According to a lead article in the *Federal Times* last week, in FY 2002, the Federal Government had predicted that more than 51,000 or 3.4% of the total work force would retire. Instead, in FY 2002, only 2.7% or less than

40,000 Federal employees actually retired. The article states that the biggest reason for the dramatic slowdown in federal employee retirement is the state of the economy. The stock market is down, unemployment is up, and many employees who had planned to cash their savings portfolios as soon as they could now are holding off for several years to build back their lost savings. This trend holds true for DOT employees as well. For the Department of Transportation, 2,019 employees were expected to retire in FY 2002, but only 1,509 actually retired. This equates to a 25 percent fewer retirements than were predicted. Predicting the number of retirements is a difficult challenge.

In conclusion, the Department has a very good working relationship with the Board. I personally have enjoyed working with former Chairman Linda Morgan and with Chairman Nober. The Department has and will continue to abide by the spirit and intent of ICCTA that created the Board as decisionally independent.

I would be pleased to respond to any questions you may have.

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